

HON. MR. JUSTICE LENNOX.

DECEMBER 10TH, 1913.

LEONARD v. CUSHING.

5 O. W. N. 453.

*Writ of Summons—Service out of Jurisdiction—Breach of Contract
—Non-Payment for Goods Sold — Place of Payment—Duty of
Debtor to Seek out Creditor—Con. Rule 25 (e)—Appeal.*

LENNOX, J., *held*, that where certain goods were sold by an Ontario firm, delivery to be made at Edmonton and no provision was made as to the place of payment, that non-payment of the purchase-price was a breach of the contract occurring in Ontario, as it was the debtor's duty to seek out his creditor and make payment, and that therefore issuance of a writ for service out of the jurisdiction was proper.

Comber v. Leyland [1898] A. C. 524, discussed.
Judgment of HOLMESTED, Registrar, reversed.

Appeal by plaintiffs from an order of Holmested, Senior Registrar, in Chambers, setting aside an order of a local Judge allowing the plaintiffs to issue a writ of summons for service out of the jurisdiction and setting aside the writ and service thereof.

F. Aylesworth, for plaintiff, appellant.

G. Osler, for defendant, respondent.

HON. MR. JUSTICE LENNOX:—Consolidated Rule 25 provides: “(1) Service out of Ontario of a writ of summons . . . may be allowed wherever (e) The action is founded . . . on a breach within Ontario of a contract, wherever made, which is to be performed within Ontario.”

There is a contract in writing, and under its express terms the goods were shipped to the defendants at Edmonton, Alberta, the plaintiffs being at the expense of carriage to that point. Certain payments were made and the plaintiffs claiming to recover the balance were allowed to proceed under the rule quoted by order of the local Judge of this Court at London. This order and the writ issued and the service effected were set aside by the order of the Registrar of this Court, sitting as Master-in-Chambers. From this order the plaintiffs appeal.

With great respect I am of opinion that the learned Registrar erred in setting aside the order of the local Judge. The “breach” upon which the action is founded is non-payment. If the contract provides either in terms or by impli-